PHYLLIS E. LEWIS

IBLA 88-511 Decided March 28, 1990

Appeal from a decision of the Moab, Utah District Office, Bureau of Land Management, reviewing an agricultural lease and setting a fair market rental. U-16054.

Affirmed.

l. Appraisals--Federal Land Policy and Management Act of 1976: Leases

> An appraisal of fair market rental value for an agricultural lease site will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charge is excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

APPEARANCES: Phyllis E. Lewis, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Phyllis E. Lewis has appealed from a December 2, 1987, decision of the Moab, Utah District Office, Bureau of Land Management (BLM), which reviewed her agricultural lease U-16054, and increased the annual rental to $1,630 per year. The decision specifically stated:

> On November 29, 1982, Phyllis E. Lewis was granted agricultural lease U-16054 for the cultivation of approximately 36 acres and the use of approximately 4 acres as a seasonal farmstead. The lands are located along the Dolores River west of Gateway, Colorado. Rental for the lease is to be reviewed every 5 years to reflect current market conditions.
>
> The November 13, 1987 Bureau of Land Management Utah State Office appraiser's report has set the annual rental for the lease at $1,630. Rental for the farmstead was determined to be $114 per year, and the rental for the production of corn silage was determined to be $1,512 for a rounded total of $1,630 per year.

In her statement of reasons Lewis argues that the BLM decision is incorrect because it relies on an appraisal that is "unfair, unjustified, biased and discriminatory." She states that the appraisal used to value her lease rental is incorrect

> because it was not figured using the same method as was
> used in appraising identical property, at the same time,
> just 200 yards from my Leased farm, who is my neighbor; the
> Keesee Ranch Partnership, Lease #U-16040. The Keesee farm
> was appraised on an A.U.M. [Animal Unit Month] basis, and
> my farm was figured on the "supposed" value of my crops. [Emphasis in original.]

She asks that BLM compute her corn silage on an AUM basis as was done for the Keesee farm for irrigated meadow. She explains that if BLM would have informed her "that the rental would be more than doubled if we continued growing corn silage" she would have informed them she would have changed her crop to irrigated meadow.

The record shows that Phyllis E. Lewis was originally issued a Special Land Use Permit (SLUP), on January 1, 1974 U-16054, for the purpose of an irrigated farming operation. Although the Federal Land Policy and Management Act of 1976 (FLPMA) repealed the authority to issue SLUP's, the Act authorized the issuance of agricultural leases pursuant to section 302(b). 43 U.S.C. § 1732 (1982).

On November 29, 1982, Lewis' SLUP was revoked and her land use was authorized until December 31, 1992, as an agricultural lease pursuant to the authority of FLPMA. The decision granting the new agricultural lease under the same serial number (U-16054) specifically provided that the lease would be subject to any rental changes resulting from an updated real estate appraisal.

The first update of the appraisal was completed January 14, 1983, at which time BLM raised the rental to $800 per year. At that time the appraisal report indicated that corn silage had been the main crop grown on the tract for the past 4 years. The next update of the appraisal was conducted over 5-1/2 years later on October 21, 1987. The field examination again showed that the lands were still being used for the irrigated cultivation of corn. The updated BLM appraisal conducted by a BLM staff appraiser resulted in an increased fair rental value of $1,630 based on the current use of the property formulated as follows:

> A seasonal farmstead occupies approximately 4 acres and valuation is treated separately. Market analysis suggests that $300 per acre should be applied to the farmstead. $300 per acre x 4 acres = $1,200 x .95 = $1,140 x .10 (rate of return) = $114 (annual rent).
>
> Pursuant to your request for an annual rental determination for the subject agricultural lease, the following estimate is furnished:
>
> Corn Silage
>
> | | |
> |---|---|
> | Per acre crop yield | = 15.00 tons * |
> | Average price per bushel | = $17.50 ** |

Credit for Lessees water, management, labor, and costs typically bourne by landowner in private sharecrop agreements	= 84.00 %	
Landowners (B.L.M.) share		= 16.00 %

Rental Calculation

(36 acres) x (15 ton/acre) x ($17.50/ton)	= $9,450	
($9,450) x (16% - landowners share)	= $1,512	
Annual rent for farmstead		= $114
Total annual rent		= $1,626
	rounded to	= $1,630

(Appraisal Report at 1).

The property was appraised using the market data approach with value being established comparing the return for the Government as if the lands had been leased on a share-crop basis. Historically, this is the same way rental value has been established for these lands since the lands were first leased under a SLUP in 1972, and were subsequently reappraised in 1983. 1/ The record confirms that appellant has never taken issue with this method of establishing fair market value for this lease rental, nor has she objected to the current use of this approach to establishing value. However, she now objects to the BLM's selection of the crop to be valued, i.e., corn silage, which has continually been her crop of choice since her leasing began. Appellant does not deny that corn was the crop she was growing when BLM conducted the field examination in 1987.

1/ An appraisal report, dated May 22, 1972, for the formulation of the original rental value for the SLUP explained the share-crop basis as follows:

"Therefore, only the market data approach will be used.

"Investigation of lands leased for agricultural purposes revealed that most lands are leased on a share crop basis and that the leased lands generally have water rights which go with the land.

"When lands are leased on a cash basis, the lease rate is considerably less that on a share crop basis due to the lack of any gamble on the lessor's part. On a cash basis the lessee is required to pay the lessor regardless of any complete or partial crop failure. Under the share crop basis the lessor gambles along with the lessee and shares either the good or bad fortune of the lessee.

"When the lessor is unable to furnish irrigation water, the leasing rate is also considerably less than when water is furnished along with the leased land.

"Under the terms of the proposed lease the BLM would furnish only the land. The lessee would have to use water acquired from another source. The lessee would be required to pay cash in advance and would be required to post a performance bond to guarantee that the lands will be properly rehabilitated when and if cultivation of the land ceases."

Appellant criticizes the BLM appraisal report pointing out that the method of appraisal is not consistent with the values used for the adjoining neighbor's lands. However, appellant also acknowledges that the Keesee Ranch land had been used for irrigated meadow rather than corn silage. She does not provide any evidence with this appeal to show how the BLM method of appraisal is in error or how the values used for adjustment to upgrade the rental are excessive. Instead, she indicates her willingness to switch crops on the lease if it will result in a lower rental value. Her reference to the neighbor's lease on an AUM basis does not establish error for the appraisal used for her own lease.

[1] Generally, appraisals will not be set aside on appeal unless an appellant is able to show error in the appraisal method used by BLM or demonstrate by convincing evidence that charges are excessive. Gerald L. Overstreet, 112 IBLA 211, 214 (1989); Lawrence Dupuis, 99 IBLA 174 (1987), Blue Mesa Road Association, 89 IBLA 120 (1985).

In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal. Big Sky Communications, Inc., 110 IBLA 213 (1989); Chalfont Communications, 108 IBLA 195, 196 (1989); Denver & Rio Grande Western Railroad Co., 101 IBLA 252, 254 (1988).

In this instance, appellant's agricultural lease was properly subject to reappraisal by BLM at a fair market rental in accordance with the terms of its issuance in 1982. The rental value has been determined by BLM, only after a detailed analysis has been undertaken in the reappraisal of this lease site. Appellant has accepted a prior reappraisal of the tract in 1987 with BLM using the same approach for formulating the fair market rental value at that time. From our review we find that appellant has not shown that there was error in the appraisal method used by BLM or that the appraised annual rental charge of $1,630 per year is excessive. Moreover, we find that there is adequate support and a rational basis in the record to substantiate the determination of rental value for this tract at $1,630.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge